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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717
23409	7590	07/08/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 07/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-38 and 40-51 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 23-38, 40-51 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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Claims 23-25, 27, 28, 31,33, 34 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa(20000-71000 Pa). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rodlets, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson discloses a process as claimed. The foodstuff passing through the extruder is in a plastic state; thus, it is inherently capable of further expansion or contraction. The foodstuff is in expanded state because it is passed through the extruder. The specification discloses initial expansion take places by extrusion through a die. Bisson discloses the extruded strand may be discharged into atmospheric pressure; thus, this meets the claimed limitation of the first pressure being atmospheric

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pressure and the second pressure is lowered than the first pressure because the puffing takes place in vacuo.

Claims 26,29,30,32,35,36-38, 40-48, 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson et al is described above. Bisson et al do not disclose using a belt conveyor, add a chemical expanding agent, the foodstuff is a confectionery, forming the composition into balls and the second temperature being lower than the first temperature.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product. It would also have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product. It would also have been obvious to make the second temperature to be lower than the first temperature because the composition has already been plasticized in the extruder; thus, the composition does not need to be heated. It is obvious the product is cooled after it exists the extruder. It would have been obvious to make the temperature around ambient to quicken the cooling of the product.

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In the response filed 3/22/04, applicant argues Bisson teaches expansion by application of a vacuum and there is absolutely no reference to expansion occurring as a result of the extrusion. This argument is not persuasive. Bisson et al teach to pass flaky food ingredients through an extruder and the ingredients are cooked in the extruder. Bisson et al disclose on column 2 lines 64-68, the temperature should be high enough to impart to the material the plasticity required for passing smoothly thorough the bores in the nozzle. The fact that the ingredients are cooked and plastic means that some expansion takes place even though further expansion takes place after extrusion. The claims do not place any limitation on how expanded the expanded food is; thus, any expansion is sufficient to meet the claimed limitation of an expanded food. The turning of the flaky food ingredients to a strand of paste-like material inherently means that expansion takes place regardless if such word is used or not. Applicant discloses in the specification that initial expansion takes place by extrusion. Thus, if applicant argues expansion does not take place in the extrusion, then the foodstuff in the claimed process is not an expanded foodstuff. Applicant further argues claim 24 specifies that the first temperature is in the range of 70-150 degree C and Bisson only teaches extruder having temperature in the range of 30-70 degreeC. While 70-150 degree C includes temperature higher than what is disclosed in Bisson et al, one end point meets the temperature disclosed in Bisson et al.; thus, the claim is anticipated by Bisson et al. With respect to new claim 49-51, Bisson et al disclose the temperature in the nozzle in the extruder is in the range of 40-100 degree C; thus, they disclose the limitation of claims 49-51.

Applicant's arguments filed 3/22/04 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 6, 2004


LIEN TRAN
PRIMARY EXAMINER
